IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 149 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KETAV AUTO SERVICES - Petitioner(s)

Versus

ADDITIONAL COLLECTOR & FOOD & CIVIL SUPPLY CONTROLLER & 1 - Respondent(s)

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Appearance :
MR KR RAVAL for Petitioner(s) : 1,
MR. PRACHCHHAK, ASST. GOVERNMENT PLEADER for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 12/01/2006

ORAL JUDGMENT

1.By way of this petition under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the legality and validity of the judgment

and order passed by the Revisional Authority, State of Gujarat, dated 24.6.1998 in partly allowing the said appeal/revision application and passing an order of seizure of petrol for an amount of Rs.10,000/-only. The petitioner has also challenged the original order passed by the Additional Collector & Food and Civil Supply Controller, Ahmedabad dated 2.12.1996 by which the petrol worth Rs.20,000/- was directed to be seized.

2. The Proceedings came to be initiated against the petitioner under the provisions of the Essential Commodities Act; 1955 and under the provisions of Gujarat Essential Articles (Licensing, Control & Stock Declaration) Order; 1981 and under the provisions of Motor Spirit & High Speed Diesel (Prevention of Mal-practices in Supply & Distribution) Order; 1990 and for breach of conditions of license. The show-cause notice came to be issued upon the petitioner on 3.5.1996 on the basis of the inspection carried out by the Competent Authority on 8.4.1996 and the petitioner was directed to show cause as to why the petrol worth Rs.59,000/- to Rs.60,000/- should not be confiscated. After giving an opportunity and considering the reply submitted by the petitioner, the Additional Collector &

Food and Civil Supply Controller, Ahmedabad passed an order dated 2.12.1996 in ordering seizure of petrol worth Rs.20,000/-only by holding that there is a breach of provisions of Section 23 of the Gujarat Essential Articles (Licensing, Control & Stock Declaration) Order; 1981, breach of Condition No.4 of the License and breach of the provisions of Motor Spirit & High Speed Diesel (Prevention of Mal-practices in Supply & Distribution) Order; 1990 and breach of provisions of Section 3 of the Essential Commodities Act; 1955. Being aggrieved and dissatisfied with the order passed by the respondent No.1-Additional Collector & Food and Civil Supply Controller, Ahmedabad dated 2.12.1996, the petitioner preferred an appeal before the State Government which was numbered as Appeal No.27 of 1996/1997 and the Deputy Secretary, Food and Civil Supply & Consumer Affairs Department, State of Gujarat by its judgment and order dated 24.6.1998 partly allowed the said appeal and reduced the seizure from Rs.20,000/- to Rs.10,000/-only. Being aggrieved and dissatisfied with the same, the petitioner has preferred the present Special Civil Application under Articles 226 and 227 of the Constitution of India.

3.Shri K.R.Raval, learned advocate appearing on behalf of the petitioner relying upon paragraph-1 of the main order dated 24.6.1998, more particularly, the observations made in the said paragraph, has submitted that the appellate authority has not found any illegality and/or irregularity committed by the petitioner and there was no cause for the Deputy Secretary even to pass order of confiscation of quantity worth Rs.10,000/-. He has also further submitted that in fact, the underground pipe line and tank were found to be leakaged on 27.2.1996 and therefore, there might be deficiency and therefore, it is requested to allow the present Special Civil Application.

4.Shri Prachchhak, learned AGP while opposing the present Special Civil Application has submitted that in fact, it was found by the Deputy Secretary that the deficiency was found to be more than which was permissible and therefore, the impugned order has been passed. He has also further submitted that reliance placed upon the pump maintenance report dated 27.2.1996 will not be helpful to the petitioner as assuming that the leakage was repaired on 27.2.1996 however, the

present case is arising out of the inspection which was carried out on 8.4.1996 and therefore, the contention on behalf of the petitioner cannot be accepted and therefore, it is requested to dismiss the present Special Civil Application.

5. Heard the learned advocates appearing on behalf of the parties.

6. It is required to be noted that initially 3000 litre petrol worth Rs.59,000/- to Rs.60,000/- was seized and after considering the reply submitted by the petitioner, the first appellate authority passed an order of confiscation of goods/petrol worth Rs.20,000/- which came to be interfered with by the Deputy Secretary by its impugned judgment and order dated 24.6.1998 and the same came to be reduced to Rs.10,000/-only. The said order came to be passed by the Deputy Secretary after holding that the deficiency which was found was more than permissible, however considering the fact that the same was not that much serious, he interfered with the order of confiscation passed by the first appellate authority and reduced the same to Rs.10,000/-only. The contention on behalf of

the petitioner that there was a leakage found and in fact, in the pump maintenance report it was also found that there was a leakage in the pipe and therefore, there might be deficiency. However, it is required to be noted that the said leakage was repaired on 27.2.1996 and the impugned order has been passed on the basis of the inspection carried out by the Competent Authority on 8.4.1996 which was carried out after the leakage was repaired and therefore, the explanation given by the petitioner cannot be accepted. In the aforesaid facts and circumstances of the case, the judgment and order passed by the Deputy Secretary to confiscate the petrol worth Rs.10,000/- only cannot be said to be in any way illegal and/or arbitrary which requires interference of this Court exercising powers under Articles 226 and 227 of the Constitution of India.

7. For the reasons stated above, the petition fails. Rule is discharged. However, there will be no order as to costs.

(M.R.SHAH, J.)

kdc.